

APPEAL NO. 022255
FILED OCTOBER 28, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing on remand was held on July 25, 2002. The case was remanded for the hearing officer to consider the March 20, 2002, medical report of the Texas Workers' Compensation Commission (Commission)-appointed required medical examination (RME) doctor, Dr. O, and determine whether the respondent's (claimant) _____, compensable injury includes her cervical spine. The hearing officer admitted Dr. O's report into evidence and determined that the compensable injury extends to and includes the claimant's cervical spine. The appellant (carrier) complains on appeal that this determination is against the great weight and preponderance of the evidence and that the hearing officer abused his discretion by not allowing the claimant to withdraw the dispute and by admitting the report of Dr. O. The claimant urges affirmance of the hearing officer's decision.

DECISION

We affirm as reformed.

The record reflects that the claimant sustained a compensable injury, in the form of right carpal tunnel syndrome (CTS), with a date of injury of _____. She received medical treatment for the CTS and had a surgical release performed. When the claimant continued experiencing pain, her treating doctor suspected that the source of the pain was due to factors other than the CTS and he suggested that the claimant be referred to a specialist. At the close of the initial hearing in this case, the claimant had not yet seen the specialist and the hearing officer told the parties that he would hold the record open and, if need be, appoint an RME doctor for the purpose of resolving the dispute surrounding the extent-of-injury issue. At the request of the hearing officer, Dr. O was appointed and he examined the claimant on March 20, 2002. After receiving Dr. O's report, the hearing officer faxed the report to the carrier on March 24, 2002. A Decision and Order finding that the claimant's compensable injury includes her cervical spine was distributed to the parties on April 17, 2002, however, the decision did not reflect the admission of Dr. O's report. The carrier appealed the decision and in Texas Workers' Compensation Commission Appeal No. 021125, decided June 24, 2002, we remanded the case for the hearing officer to admit Dr. O's report and determine the extent-of-injury issue. On remand, the hearing officer admitted Dr. O's report over the objection of the carrier and determined that the claimant's compensable injury extends to and includes her cervical spine.

The carrier argues on appeal that the hearing officer abused his discretion and committed procedural error by not allowing the claimant to withdraw her claim relating to the cervical spine. We already addressed this issue in our remand decision in Appeal No. 021125, *supra*, and will not revisit the issue in this decision.

The carrier contends that the hearing officer erred in admitting Dr. O's report at the hearing on remand as it was not obtained in accordance with applicable Commission rules. We have frequently held that to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). As the report in question provides no support of any kind for the determination that the claimant's compensable injury includes her cervical spine, we cannot agree that it resulted in the rendition of an improper judgment. Therefore, even assuming that the admission of the report constituted an abuse of discretion, any error in so doing would not rise to the level of reversible error.

The hearing officer did not err in determining that the claimant's compensable injury extends to and includes her cervical spine. Extent of injury is a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986). We do note, however, that the hearing officer's Finding of Fact No. 3 reflects that the Commission-appointed designated doctor opined that the claimant has a cervical injury and related it to repetitive trauma to the neck. As it is apparent from the record that it was the claimant's treating doctor, not the designated doctor, who gave this opinion, Finding of Fact No. 3 is reformed to reflect the same.

We affirm the hearing officer's decision and order as reformed.

The true corporate name of the insurance carrier is **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge